

The Examiner states:

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the component could be made in a process wherein an oxidizer equivalent to oxygen is used to oxidize.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant respectfully traverses this requirement for restriction. While MPEP § 806.05(e) allows the Examiner to restrict a product by process claim if the product as claimed can be made by another and materially different process. Here, the Examiner states, the product as claimed can be made by oxidizing, wherein an oxidizer equivalent to oxygen is used to oxidize. Applicant respectfully submits that oxidation can only be accomplished by oxygen. The CONDENSED CHEMICAL DICTIONARY, Thirteenth Edition, defines an oxidizing material as any compound that spontaneously evolves oxygen at room temperature or under slight heating. A copy of this definition is attached. The term includes such chemicals as peroxides, chlorates, perchlorates, nitrates and permagnates. The claims of Invention I require only that a partial pressure of oxygen be available to preoxidize the component. The broad claims of Invention I are not limited to pure oxygen. Other oxidizing materials within the definition of the CONDENSED CHEMICAL DICTIONARY may thus be used to achieve the partial pressure of oxygen required by the Invention of Claim I. Thus, for the very reasons given by the Examiner, Inventions I and II are not distinct and should be examined together.

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Applicant also notes that MPEP § 814 states:

As pointed out in *Ex parte Ljungstrom*, 1905 C.D. 541, 119 O.G. 2335 (Comm'r Pat. 1905), the particular limitations in the claims and the reasons

why such limitations are considered to restrict the claims to a particular disclosed species should be mentioned if necessary to make the requirement clear.

MPEP § 814 proceeds to say:

The separate inventions should be identified by a grouping of the claims with a short description of the total extent of the invention claimed in each group, specifying the type or relationship of each group as by stating the group is drawn to a process, or to a subcombination, or to a product, etc., and should indicate the classification or the separate status of each group, as for example, by class or subclass.

MPEP § 816 states:

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

In this requirement for restriction, the MPEP requirements are met. The Examiner has reached a conclusion, which is contrary to the teaching of the invention or art. Applicant notes that oxidation by oxidizing materials that are not pure oxygen is achieved by substances or compounds that include oxygen as a compound, but yield oxygen as a product upon disassociation or decomposition. The process of Invention I does not preclude this type of compound as the source of oxygen to provide the partial pressure. Applicant will withdraw this traverse if the Examiner will identify an oxidizing material within the definition of the CONDENSED CHEMICAL DICTIONARY that does not produce oxygen for oxidation.

Applicant submits that the Examiner has not identified an oxidizer equivalent that is outside the scope of Invention I, and that the reasons provided by the Examiner for restriction actually support the case for examining claim 19 with the claims of Invention I. Applicant submits that this restriction requirement is improper and respectfully requests that the requirement for election be withdrawn. Applicant further submits that if a complete search of the art that includes class 428, subclass 632 does disclose a compound that oxidizes without the production of oxygen at some partial pressure, then the Examiner can reinstitute this restriction requirement.

### CONCLUSION

Applicant respectfully requests withdrawal of the election and expeditious allowance of all claims and the application.

If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the undersigned. This paper is filed by the undersigned at the provided phone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required for this amendment, or credit any overpayment to Deposit Account No. 50-1059.

The Commissioner is also requested to grant a petition for one-month's extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an such an extension of time to Deposit Account No. 50-1059.

Reconsideration of these claims and prompt allowance of the application is therefore requested. A favorable action is earnestly solicited.

Respectfully submitted,

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By:

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